

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D. P. MARSHALL JR., JUDGE

DIVISION II

CA06-1378

20 JUNE 2007

CATHERINE R. WALTZ,
APPELLANT

v.

JEANIE WALTZ GOLDEN, as
Administratrix of the Estate of Charles
J. Waltz, deceased, and JEANIE WALTZ
GOLDEN, Individually,

APPELLEE

AN APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[CV2005-1153-1]

HONORABLE ROBERT W.
GARRETT, CIRCUIT JUDGE

REVERSED and REMANDED

The three children of Mr. and Mrs. Charles J. Waltz dispute who is entitled to their deceased parents' real estate. On our *de novo* review of the circuit court's decision in light of the entire record, we reverse and remand for further proceedings. *Hope v. Hope*, 333 Ark. 324, 331, 969 S.W.2d 633, 637 (1998).

I.

In 1997, Mr. and Mrs. Waltz executed a deed conveying their home to themselves and their daughter, Catherine, as joint tenants with a right of survivorship. In 1999, Mrs. Waltz bought an adjoining one-acre lot and took title in the same way. Mrs. Waltz died in 2004. When Mr. Waltz died in 2005, Catherine claimed all the

real estate as hers alone, while her siblings—Jeanie and Charles Jr.—claimed that their parents intended for each child to have one-third of the property.

Jeanie eventually filed this lawsuit, both as the administratrix of their father's estate and individually. Her complaint sought either reformation of the deeds, or the imposition of a constructive trust on the real estate, based on alleged fraud, undue influence, misrepresentation, or their parents' intent that Catherine was supposed to share the real property with Jeanie and Charles Jr. After a trial, the circuit court ordered the deeds reformed, concluding that the Waltzes did some do-it-yourself estate planning but had clearly intended for Catherine to divide the realty with her siblings. The court did not reach the constructive-trust claim.

The court's letter opinion bears quotation in full.

As many people do, Charles and Carolyn Waltz tried to save a few dollars in legal fees and perform their own estate planning. Their method was flawed, but their intent is clear.

I find that the deeds executed by Charles J. Waltz and Carolyn J. Waltz should be reformed to reflect their intent that their real property be shared equally by their son, Charles Waltz and their daughters, Jeanie Waltz Golden and Catherine R. Waltz. This decision is based primarily upon the testimony of Catherine R. Waltz.

Catherine Waltz testified that she first learned about the deeds after her mother died. She did not know the legal implication of the joint tenancy until she talked to a lawyer. Prior to her mother's death she stated that she promised her mother that she would share the assets. It is clear that they all believed that the real property were assets of the estate.

The court then entered an order requiring Catherine to execute quitclaim deeds to Jeanie as Administratrix of Mr. Waltz's estate. Catherine appeals. She argues that, based on the record, the circuit court clearly erred by looking beyond the face of the deeds. She also argues, in the alternative, that the court abused its discretion by excluding evidence of the Waltzes' intentions—statements they made about what was to happen to their real property and why—as hearsay. Jeanie and Charles Jr. contend that Catherine waived all her arguments and, in any event, that they lack merit.

II.

We reverse and remand. This was not a case for reformation, though it may be one for a constructive trust, and on remand the circuit court should decide that credibility-laden question based on all the admissible evidence about the Waltzes' intentions.

Catherine's attempt to block any inquiry behind the face of the deeds cannot succeed. This is not because she waived the point; she preserved it in her answer. Catherine's effort to stop the case at the deeds fails because, when necessary, equity disregards the form and implements the substance of the parties' intentions—here, the Waltzes' intentions about ownership of their home and the adjoining lot. *Williams v. Cotten*, 9 Ark. App. 304, 313, 658 S.W.2d 421, 426 (1983); JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 378 (1941). To be sure, the deeds show the Waltzes' intent. But that showing is not beyond challenge. On proof

that is clear, decisive, and convincing, equity may enforce the Waltzes' intentions even though those intentions vary from the letter of these writings. *Hope*, 333 Ark. at 331, 969 S.W.2d at 636 (1998); *Kingrey v. Wilson*, 227 Ark. 690, 694–95, 301 S.W.2d 23, 26 (1957). This heightened evidentiary burden does not require that the evidence be undisputed. *Meeks v. Borum*, 240 Ark. 805, 806, 402 S.W.2d 408, 409 (1966). Nonetheless, this burden insures that a writing manifesting a party's intentions will stand absent extraordinary proof.

We understand the circuit court's careful opinion as applying these venerable legal principles. This was not a case, however, for reformation. This equitable doctrine is flexible, but it requires either a mutual mistake or a unilateral mistake accompanied by fraud or other inequitable conduct. *Wyatt v. Arkansas Game & Fish Comm'n*, 360 Ark. 507, 513–14, 202 S.W.3d 513, 517 (2005); PAUL JONES, JR., ARKANSAS LAW OF TITLE TO REAL PROPERTY § 158 (1935). It was undisputed that Catherine did not know anything about the deeds until years after they were executed; therefore no mutual mistake—for example, about a legal description—existed. *Compare Meeks*, 240 Ark. at 805–06, 402 S.W.2d at 408. On Jeanie and Charles Jr.'s theory of the case, the Waltzes made a mistake about whether Catherine would implement their intentions. But this error in judgment (if it occurred) is not the kind of mistake that would support reformation. *Corey v. Mercantile Ins. Co. of America*, 205 Ark. 546, 551, 169 S.W.2d 655, 658–59 (1943); Howard Brill, *Reformation in Arkansas*, 1999

ARKANSAS LAW NOTES 1. We have looked but found no precedent for a reformation in these circumstances.

As Jeanie and Charles Jr. also pleaded, however, the facts may well support a constructive trust. If the record as a whole demonstrates clearly and decisively to the circuit court that the Waltzes intended for Catherine to share the realty with her siblings, then the remedy is to subject this property to a trust consistent with the Waltzes' intentions. *Nichols v. Wray*, 325 Ark. 326, 333, 925 S.W.2d 785, 789 (1996); *Kingrey, supra*.

We reverse because the circuit court abused its evidentiary discretion in making its decision about the Waltzes' intentions. Catherine wanted to offer testimony about her parents' statements to her (and other people) that the Waltzes intended for the real property to be hers alone. The circuit court rejected Catherine's assertion that these statements were admissions against the estate's interest, and thus not hearsay. This ruling was error. Any statement by Mr. or Mrs. Waltz that Catherine alone was to have the real estate was against the interest of the Waltzes' estates and their heirs at law. Therefore any such statement was not hearsay, and was admissible under Arkansas Rule of Evidence 801(d)(2) against Jeanie, the administratrix of Mr. Waltz's estate and one of her father's heirs at law. *O'Fallon v. O'Fallon*, 341 Ark. 138, 143, 14 S.W.3d 506, 509–10 (2000); *Easterling v. Weedman*, 54 Ark. App. 22, 35, 922 S.W.2d 735, 741 (1996).

Jeanie and Charles Jr. correctly point out that an evidentiary error must be prejudicial to justify reversal. *Webb v. Thomas*, 310 Ark. 553, 558, 837 S.W.2d 875, 877 (1992). This one was, and their contrary argument does not persuade us. The circuit court's decision turned primarily on Catherine's testimony about the timing of events and her parents' directions to her. To make fully informed findings about the facts, however, the court needed to hear all of Catherine's testimony about her parents' intentions. As we read the transcript, by sustaining the estate's objections the court did not get the whole story from the perspective of Catherine or her witnesses. Because the excluded testimony was 180° different from the circuit court's findings based on Catherine's incomplete testimony about the Waltzes' intentions, Catherine was prejudiced by the exclusion.

We reverse and remand for the circuit court to retry the case, discern Mr. and Mrs. Waltz's intentions based on all the admissible evidence, and determine whether to impose a constructive trust on the real estate.

GLADWIN and MILLER, JJ., agree.